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3:04-CV-01987 PINNOCK V. OLYMPIC RESORT HOTEL

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Attorneys for Plaintiffs

9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

Case No.: 04 CV 1987 JAH (Rbb)

11 **MANTIC ASHANTI'S CAUSE, SUING**
12 **ON BEHALF OF THEODORE A.**
13 **PINNOCK AND ITS MEMBERS; and**
14 **THEODORE A. PINNOCK, An**
15 **Individual,**

Plaintiffs,

v.

16 **OLYMPIC RESORT HOTEL a.k.a.**
17 **OLYMPIC RESORT HOTEL & SPA;**
18 **GOLF COURSE HOTELS, INC. d.b.a.**
19 **OLYMPIC RESORT HOTEL a.k.a.**
20 **OLYMPIC RESORT HOTEL & SPA;**
21 **THEODORE L. VALLAS d.b.a.**
22 **OLYMPIC RESORT HOTEL a.k.a.**
23 **OLYMPIC RESORT HOTEL & SPA;**
24 **OLYMPIC RESORT JOINT**
25 **VENTURE; THEODORE L. VALLAS,**
26 **A General Partner; GOLF COURSE**
27 **HOTELS, INC., A General Partner; And**
28 **DOES 1 THROUGH 10, Inclusive**
Defendants.

CIVIL COMPLAINT:
DISCRIMINATORY PRACTICES IN
PUBLIC ACCOMMODATIONS
[42 U.S.C. 12182(a) ET. SEQ; CIVIL
CODE 51, 52, 54, 54.1]

NEGLIGENCE
[CIVIL CODE 1714(a), 2338, 3333;
EVIDENCE CODE 669(a)]

DEMAND FOR JURY TRIAL
[F.R.Civ.P. rule 38(b); Civ.L.R. 38.1]

INTRODUCTION

Plaintiffs MANTIC ASHANTI'S CAUSE SUING ON BEHALF OF THEODORE A.
PINNOCK AND ITS MEMBERS and THEODORE A. PINNOCK, An Individual, herein
complain, by filing this Civil Complaint in accordance with rule 8 of the Federal Rules of Civil
Procedure in the Judicial District of the United States District Court of the Southern District of

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1 California, that Defendants have in the past, and presently are, engaging in discriminatory practices
2 against individuals with disabilities, specifically including minorities with disabilities. Plaintiffs
3 allege this civil action and others substantial similar thereto are necessary to compel access
4 compliance because empirical research on the effectiveness of Title III of the Americans with
5 Disabilities Act indicates this Title has failed to achieve full and equal access simply by the
6 executive branch of the Federal Government funding and promoting voluntary compliance efforts.
7 Further, empirical research shows when individuals with disabilities give actual notice of potential
8 access problems to places of public accommodation without a federal civil rights action, the public
9 accommodations do not remove the access barriers. Therefore, Plaintiffs make the following
10 allegations in this federal civil rights action:

11 **JURISDICTION AND VENUE**

12 1. The federal jurisdiction of this action is based on the Americans with Disabilities Act, 42
13 United States Code 12101-12102, 12181-12183 and 12201, et seq. Venue in the Judicial District
14 of the United States District Court of the Southern District of California is in accordance with 28
15 U.S.C. § 1391(b) because a substantial part of Plaintiffs' claims arose within the Judicial District of
16 the United States District Court of the Southern District of California.

17 **SUPPLEMENTAL JURISDICTION**

18 2. The Judicial District of the United States District Court of the Southern District of
19 California has supplemental jurisdiction over the state claims as alleged in this Complaint pursuant
20 to 28 U.S.C. § 1367(a). The reason supplemental jurisdiction is proper in this action is because all
21 the causes of action or claims derived from federal law and those arising under state law, as herein
22 alleged, arose from common nucleus of operative facts. The common nucleus of operative facts,
23 include, but are not limited to, the incidents where Plaintiff's Member Theodore A. Pinnock was
24 denied full and equal access to Defendants' facilities, goods, and/or services in violation of both
25 federal and state laws when they attempted to enter, use, and/or exit Defendants' facilities as
26 described below within this Complaint. Further, due to this denial of full and equal access,
27 Theodore A. Pinnock and other persons with disabilities were injured. Based upon the said
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1 allegations, the state actions, as stated herein, are so related to the federal actions that they form
2 part of the same case or controversy and the actions would ordinarily be expected to be tried in one
3 judicial proceeding.

4 **NAMED DEFENDANTS AND NAMED PLAINTIFFS**

5 3. Defendants are, and, at all times mentioned herein, were, a business or corporation or
6 franchise organized and existing and/or doing business under the laws of the State of California.
7 Defendant OLYMPIC RESORT HOTEL a.k.a. OLYMPIC RESORT HOTEL & SPA is located at
8 6111 El Camino Real, Carlsbad, California 92009. Plaintiffs are informed and believe and thereon
9 allege that Defendants GOLF COURSE HOTELS, INC. and/or THEODORE L. VALLAS are the
10 owners, operators, and/or doing business as OLYMPIC RESORT HOTEL a.k.a. OLYMPIC
11 RESORT HOTEL & SPA. Defendant GOLF COURSE HOTELS, INC. is located at 2192 Palomar
12 Airport Road, Carlsbad, California 92008. Defendant THEODORE L. VALLAS is located at 246
13 5th Avenue, Encinitas, California 92024. Plaintiffs are informed and believe and thereon allege that
14 Defendant OLYMPIC RESORT JOINT VENTURE is the owner, operator, and/or lessor of the
15 property located at 6111 El Camino Real, Carlsbad, California 92008, Assessor Parcel number 760-
16 221-15. Plaintiffs are informed and believe and thereon allege that Defendants GOLF COURSE
17 HOTELS, INC. and THEODORE L. VALLAS are general partners of the OLYMPIC RESORT
18 JOINT VENTURE. The words Plaintiffs" and "Plaintiff's Member" as used herein specifically
19 include the organization MANTIC ASHANTI'S CAUSE, its Members, its member Theodore A.
20 Pinnock and persons associated with its Members who accompanied Members to Defendants'
21 facilities, as well as THEODORE A. PINNOCK, An Individual.

22 4. Defendants Does 1 through 10, were at all times relevant herein subsidiaries, employers,
23 employees, agents, of OLYMPIC RESORT HOTEL a.k.a. OLYMPIC RESORT HOTEL & SPA;
24 GOLF COURSE HOTELS, INC. d.b.a. OLYMPIC RESORT HOTEL a.k.a. OLYMPIC RESORT
25 HOTEL & SPA; THEODORE L. VALLAS d.b.a. OLYMPIC RESORT HOTEL a.k.a. OLYMPIC
26 RESORT HOTEL & SPA; OLYMPIC RESORT JOINT VENTURE; THEODORE L. VALLAS, A
27 General Partner; and GOLF COURSE HOTELS, INC., A General Partner. Plaintiffs are ignorant
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1 of the true names and capacities of Defendants sued herein as Does 1 through 10, inclusive, and
2 therefore sues these Defendants by such fictitious names. Plaintiffs will pray leave of the court to
3 amend this complaint to allege the true names and capacities of the Does when ascertained.

4 5. Plaintiffs are informed and believe, and thereon allege, that Defendants and each of them
5 herein were, at all times relevant to the action, the owner, lessor, lessee, franchiser, franchisee,
6 general partner, limited partner, agent, employee, representing partner, or joint venturer of the
7 remaining Defendants and were acting within the course and scope of that relationship. Plaintiffs
8 are further informed and believe, and thereon allege, that each of the Defendants herein gave
9 consent to, ratified, and/or authorized the acts alleged herein to each of the remaining Defendants.

10 CONCISE SET OF FACTS

11 6. Plaintiff MANTIC ASHANTI'S CAUSE is an organization that advocates on the behalf of
12 its members with disabilities when their civil rights and liberties have been violated. Plaintiff's
13 member THEODORE A. PINNOCK is a member of Plaintiff Organization and has an impairment
14 in that he has Cerebral Palsy and due to this impairment he has learned to successfully operate a
15 wheelchair.

16 7. On August 12, 2004, Plaintiff's Member and Plaintiff THEODORE A. PINNOCK went to
17 Defendants' OLYMPIC RESORT HOTEL a.k.a. OLYMPIC RESORT HOTEL & SPA facilities to
18 utilize their goods and/or services. When Plaintiff's Member and Plaintiff THEODORE A.
19 PINNOCK patronized Defendants' OLYMPIC RESORT HOTEL a.k.a. OLYMPIC RESORT
20 HOTEL & SPA facilities, he was unable to use and/or had difficulty using the public
21 accommodations' disabled parking, exterior path of travel, entrance, cashier counter in the lobby,
22 bar counter in the lounge area, computer counter, interior path of travel, lobby restroom, pool,
23 guestroom, guestroom entrance, guestroom interior path of travel, guestroom closet, guestroom
24 lamps, and guestroom bathroom facilities at Defendants' business establishments because they
25 failed to comply with ADA Access Guidelines For Buildings and Facilities (hereafter referred to as
26 "ADAAG") and/or California's Title 24 Building Code Requirements. Defendants failed to remove
27 access barriers within the public accommodations' disabled parking, exterior path of travel,
28

1 entrance, cashier counter in the lobby, bar counter in the lounge area, computer counter, interior
2 path of travel, lobby restroom, pool, pool area restroom, guestroom, guestroom entrance, guestroom
3 interior path of travel, guestroom closet, guestroom lamps, and guestroom bathroom facilities of
4 Defendants' OLYMPIC RESORT HOTEL a.k.a. OLYMPIC RESORT HOTEL & SPA
5 establishment.

6 8. Plaintiff's member personally experienced difficulty with said access barriers at
7 Defendants' OLYMPIC RESORT HOTEL a.k.a. OLYMPIC RESORT HOTEL & SPA facility.
8 For example, the parking facility has one hundred and ninety three (193) parking spaces, six (6) of
9 which are disabled parking spaces. Two (2) of the six (6) disabled parking spaces, which are
10 located by the lobby, are non-compliant "regular" disabled parking spaces that are only sixteen feet
11 to seventeen feet (16' - 17') long and fail to have the required access aisles. Two (2) of the
12 remaining four (4) disabled parking spaces are non-complaint "regular" disabled parking spaces
13 that are only sixteen feet (16') long. The remaining two (2) disabled parking spaces are non-
14 complaint "van accessible" disabled parking spaces that are only sixteen feet (16') long with a
15 slope of up to four percent (4%) and one space fails to have the required disability signage. It is
16 required that all disabled parking spaces are at least eighteen feet (18') long. All "regular" disabled
17 parking spaces are required to have a five-foot (5') wide access aisle on the right hand side of the
18 disabled parking space without the encroachment of a ramp in to the access aisle. All disabled
19 parking spaces are required to have a slope no greater than two percent (2%). Disabled parking
20 spaces are required to dispersed evenly throughout the facility and should be located nearest the
21 accessible guestrooms and entrances. There are two (2) entryways into the parking lot, both of
22 which fail to have the required signage warning motorists that anyone illegally parking in a
23 disabled parking space will be towed/fined or both.

24
25 9. The exterior path of travel is inaccessible. The path of travel from the public sidewalk and
26 from three (3) of the six (6) disabled parking spaces to the primary accessible entrance fails to be
27 accessible as it forces members of the disability community to traverse through vehicular traffic
28 without the benefit of a marked path of travel. The slope of the ramps from the two (2) "regular"

1 disabled parking spaces located by the lobby are inaccessible, as their slopes are eleven percent
2 (11%) and fail to have the required side flares. It is required that the surface slope of ramps do not
3 exceed 8.33% and have side flares with a slope no greater than ten percent (10%).

4 10. The front entrance to the Defendants' establishment is inaccessible, as it fails to have the
5 required disability signage. The front entrance door to the office is inaccessible, as it fails to have
6 the required the smooth and uninterrupted surface on the bottom ten inches (10") of all doors that
7 allows the door to be opened by a wheelchair footrest without creating a hazard. There is a loose
8 doormat at the front entrance door that fails to meet the requirement that all doormats are anchored
9 securely or recessed onto the door landing.

10 11. The cashier counter in the lobby is inaccessible, as it is thirty-seven inches (37") high, when
11 it is required to be no higher than thirty-four inches (34"). The bar in the lounge area is
12 inaccessible, as it is forty inches (40") high, when it is required to be no higher than thirty-four
13 inches (34"). The computer counter is inaccessible, as it is forty inches (40") high, when it is
14 required to be no higher than thirty-four inches (34").

15 12. The interior path of travel of the Defendants' establishment is inaccessible, as there are
16 several steps from the lobby to the accessible guestrooms that fail to have the required access
17 ramps.

18 13. The pool is inaccessible, as it fails to have the required device to assist disabled patrons in
19 and out of the pool.

20 14. The lobby men's restroom is inaccessible. The restroom fails to have the required disability
21 signage. The stall door fails to have the required handles on both sides of the stall door. The stall
22 fails to have the required self-closing mechanism. The height of the commode is only sixteen and a
23 half inches (16 1/2"), when it is required to be between seventeen inches and nineteen inches (17"-
24 19") high. The height of the coat hook is seventy-five inches (75"), when it is required to be no
25 higher than forty-eight inches (48") from the floor surface. The hot water and drainpipes
26 underneath the lavatory fail to have the required covering. The height of the soap dispenser is
27 forty-two inches (42"), when it is required to be no higher than forty inches (40"). The height of
28

1 the paper towel dispenser is forty-four inches (44”), when it is required to be no higher than forty
2 inches (40”). The restroom fails to have the required audible and visual alarm system.

3 15. The Defendants’ establishment has a total of seventy-eight (78) guestrooms, including three
4 (3) non-complaint “accessible” guestrooms, one (1) of which has a roll-in shower. If a hotel has
5 between seventy-six and one hundred (76 and 100) guestrooms, the hotel shall provide at least four
6 (4) fully accessible rooms, plus one (1) additional fully accessible guestroom with a roll-in shower.
7 If a hotel has between seventy-six and one hundred (76 and 100) guestrooms, the hotel shall
8 provide four (4) accessible guestrooms for members of the disability community who are hearing
9 impaired. The accessible guestrooms must be dispersed among the various classes of sleeping
10 accommodations, providing a range of options applicable to room sizes, costs, amenities provided,
11 and the number of beds provided. Defendants’ hotel fails to have the required accessible
12 guestrooms.

13 16. Plaintiff’s member and Plaintiff Theodore A. Pinnock had reserved a “suite” at the
14 Defendants’ hotel, however Plaintiff’s member and Plaintiff Theodore A. Pinnock was given
15 Guestroom 106, which is considered a “studio”, because all of the “suites” are located on the
16 second (2nd) floors and there fails to be any wheelchair access to the second (2nd) floors.
17 Guestroom 106 is inaccessible. The doorknob on the guestroom entrance door is inaccessible, as it
18 requires tight grasping and/or twisting of the wrist to operate. The key for the guestroom entrance
19 door is inaccessible, as it requires tight grasping and/or twisting of the wrist to operate. The
20 interior path of travel is too narrow and is inaccessible. The lamp switches are inaccessible, as they
21 require tight grasping and/or twisting by the wrist to operate. The clothes bar located in the closet
22 is too high and is inaccessible. The bathroom of Guestroom 106 is also inaccessible. The doorway
23 of the bathroom is too narrow and is inaccessible. The toilet fails to have the required grab bars.
24 The bathtub fails to have the required grab bars. The lavatory fails to have the required knee
25 clearance. The faucet handles are inaccessible, as they require tight grasping and/or twisting of the
26 wrist to operate.
27

28 17. In addition to the violations personally experienced by Plaintiff’s member and Plaintiff

1 Theodore A. Pinnock, additional violations of federal and state disability laws exist at Defendants'
2 OLYMPIC RESORT HOTEL a.k.a. OLYMPIC RESORT HOTEL & SPA establishment. For
3 example, the men's restroom located in the pool area is inaccessible. The restroom fails to have the
4 required disability signage. The stall door fails to have the required handles on both sides of the
5 stall door. The stall fails to have the required self-closing mechanism. The height of the threshold
6 at the restroom entrance door is two inches (2") high and fails to have the required ramp. The
7 strike clearance of the restroom door is a mere three inches (3"), when it is required to be at least
8 eighteen inches (18"). The round locking mechanism on the restroom door is inaccessible, as it
9 requires tight grasping and/or twisting of the wrist to operate. The toilet fails to have the required
10 grab bars. The height of the toilet seat cover dispenser is forty-five inches (45"), when it is
11 required to be no higher than forty inches (40") from the floor surface. The height of the toilet is
12 sixteen inches (16"), when it is required to be between seventeen inches and nineteen inches (17"-
13 19") high. The hot water and drainpipes underneath the lavatory fail to have the required covering.
14 The height of the soap dispenser is forty-eight inches (48"), when it is required to be no higher than
15 forty inches (40"). The height of the paper towel dispenser is fifty-eight inches (58"), when it is
16 required to be no higher than forty inches (40"). The restroom fails to have the required audible
17 and visual alarm system.

18 18. Guestroom 508, a designated "accessible" room, located in the Defendants' hotel is
19 inaccessible. The entrance door fails to have the required the smooth and uninterrupted surface on
20 the bottom ten inches (10") of all doors that allow the door to be opened by a wheelchair footrest
21 without creating a hazard. The small round key required to open the entrance door is inaccessible,
22 as is requires tight grasping and/or twisting of the wrist to operate. The doorknob on the guestroom
23 entrance door is inaccessible, as it requires tight grasping and/or twisting of the wrist to operate.
24 The strike clearance of the entrance door is a mere two inches (2"), when it is required to be at least
25 eighteen inches (18"). The locking mechanism on the entrance door is inaccessible, as it requires
26 tight grasping and/or twisting of the wrist to operate. The small round lamp switches are
27 inaccessible, as they require tight grasping and/or twisting by the wrist to operate. The control
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1 switch on the air-conditioning unit is inaccessible, as it requires tight grasping and/or twisting of
2 the wrist to operate. The height of the shelf is sixty-nine inches (69") high, when it is required to
3 be no more than forty-eight inches (48") high. The height of the clothes hanger is sixty-two inches
4 (62"), when it is required to be no higher than forty-eight inches (48"). The knee clearance depth at
5 the desk inside the room is only five inches (5"), when it is required to be at least nineteen inches
6 (19"). The height of the threshold at the balcony entrance door is two inches (2") and fails to have
7 the required ramp. The guestroom fails to have the required audible and visual alarm system.

8 19. The bathroom located inside Guestroom 508 is inaccessible. The height of the toilet is
9 sixteen inches (16"), when it is required to be between seventeen inches and nineteen inches (17"-
10 19") high. The shower stall is only thirty-nine inches by fifty-eight inches (39"x 58"), when it is
11 required to be at least thirty inches by sixty inches (30"x 60"). The shower fails to have the
12 required grab bars. The height of the towels is sixty-five inches (65"), when they are required to be
13 no higher than forty-eight inches (48"). The height of the hair dryer is fifty-five inches (55"), when
14 it is required to be no higher than forty-eight inches (48") high. The height of the iron is fifty-five
15 inches (55"), when it is required to be no higher than forty-eight inches (48"). The bathroom fails
16 to have the required audible and visual alarm system.

17 20. Pursuant to federal and state law, Defendants are required to remove barriers to their
18 existing facilities. Further, Defendants had actual knowledge of their barrier removal duties under
19 the Americans with Disabilities Act and the Civil Code before January 26, 1992. Also, Defendants
20 should have known that individuals with disabilities are not required to give notice to a
21 governmental agency before filing suit alleging Defendants failed to remove architectural barriers.

22 21. Plaintiffs believe and herein allege Defendants' facilities have access violations not
23 directly experienced by Plaintiff's Member which preclude or limit access by others with
24 disabilities, including, but not limited to, Space Allowance and Reach Ranges, Accessible Route,
25 Protruding Objects, Ground and Floor Surfaces, Parking and Passenger Loading Zones, Curb
26 Ramps, Ramps, Stairs, Elevators, Platform Lifts (Wheelchair Lifts), Windows, Doors, Entrances,
27 Drinking Fountains and Water Coolers, Water Closets, Toilet Stalls, Urinals, Lavatories and
28

1 Mirrors, Sinks, Storage, Handrails, Grab Bars, and Controls and Operating Mechanisms, Alarms,
2 Detectable Warnings, Signage, and Telephones. Accordingly, Plaintiffs allege Defendants are
3 required to remove all architectural barriers, known or unknown. Also, Plaintiffs allege Defendants
4 are required to utilize the ADA checklist for Readily Achievable Barrier Removal approved by the
5 United States Department of Justice and created by Adaptive Environments.

6 22. Based on these facts, Plaintiffs allege Plaintiff's Member and Plaintiff Theodore A. Pinnock
7 was discriminated against each time he patronized Defendants' establishment. Plaintiff's Member
8 and Plaintiff Theodore A. Pinnock was extremely upset due to Defendants' conduct. Further,
9 Plaintiff's Member and Plaintiff THEODORE A. PINNOCK experienced pain in his legs, back,
10 arms, shoulders and wrists when he attempted to enter, use, and exit Defendants' establishment.

11 **WHAT CLAIMS ARE PLAINTIFFS ALLEGING AGAINST EACH NAMED**
12 **DEFENDANT**

13 23. OLYMPIC RESORT HOTEL a.k.a. OLYMPIC RESORT HOTEL & SPA; GOLF
14 COURSE HOTELS, INC. d.b.a. OLYMPIC RESORT HOTEL a.k.a. OLYMPIC RESORT HOTEL
15 & SPA; THEODORE L. VALLAS d.b.a. OLYMPIC RESORT HOTEL a.k.a. OLYMPIC
16 RESORT HOTEL & SPA; OLYMPIC RESORT JOINT VENTURE; THEODORE L. VALLAS, A
17 General Partner; GOLF COURSE HOTELS, INC., A General Partner; and Does 1 through 10 will
18 be referred to collectively hereinafter as "Defendants."

19 24. Plaintiffs aver that the Defendants are liable for the following claims as alleged below:

20 **DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**

21 **FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS- Claims Under The Americans**
22 **With Disabilities Act Of 1990**

23 **CLAIM I AGAINST ALL DEFENDANTS: Denial Of Full And Equal Access**

24 25. Based on the facts plead at ¶¶ 6-22 above and elsewhere in this complaint, Plaintiff's
25 Member was denied full and equal access to Defendants' goods, services, facilities, privileges,
26 advantages, or accommodations. Plaintiffs allege Defendants are a public accommodation owned,
27 leased and/or operated by Defendants. Defendants' existing facilities and/or services failed to
28

1 provide full and equal access to Defendants' facility as required by 42 U.S.C. § 12182(a). Thus,
2 Plaintiff's Member was subjected to discrimination in violation of 42 United States Code
3 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because Plaintiff's Member was denied equal access to
4 Defendants' existing facilities.

5 26. Plaintiff's member Theodore A. Pinnock has physical impairments as alleged in ¶ 6 above
6 because his conditions affect one or more of the following body systems: neurological,
7 musculoskeletal, special sense organs, and/or cardiovascular. Further, Plaintiff's member Theodore
8 A. Pinnock's said physical impairments substantially limits one or more of the following major life
9 activities: walking. In addition, Plaintiff's member Theodore A. Pinnock cannot perform one or
10 more of the said major life activities in the manner, speed, and duration when compared to the
11 average person. Moreover, Plaintiff's member Theodore A. Pinnock has a history of or has been
12 classified as having a physical impairment as required by 42 U.S.C. § 12102(2)(A).

13 CLAIM II AGAINST ALL DEFENDANTS: **Failure To Make Alterations In Such A**
14 **Manner That The Altered Portions Of The Facility Are Readily Accessible And Usable By**
Individuals With Disabilities

15 27. Based on the facts plead at ¶¶ 6-22 above and elsewhere in this complaint, Plaintiff's
16 Member Theodore A. Pinnock was denied full and equal access to Defendants' goods, services,
17 facilities, privileges, advantages, or accommodations within a public accommodation owned,
18 leased, and/or operated by Defendants. Defendants altered their facility in a manner that affects or
19 could affect the usability of the facility or a part of the facility after January 26, 1992. In performing
20 the alteration, Defendants failed to make the alteration in such a manner that, to the maximum
21 extent feasible, the altered portions of the facility are readily accessible to and usable by individuals
22 with disabilities, including individuals who use wheelchairs, in violation of 42 U.S.C.
23 §12183(a)(2).

24 28. Additionally, the Defendants undertook an alteration that affects or could affect the usability
25 of or access to an area of the facility containing a primary function after January 26, 1992.
26 Defendants further failed to make the alterations in such a manner that, to the maximum extent
27 feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains
28

1 serving the altered area, are readily accessible to and usable by individuals with disabilities in
2 violation 42 U.S.C. §12183(a)(2).

3 29. Pursuant to 42 U.S.C. §12183(a), this failure to make the alterations in a manner that, to the
4 maximum extent feasible, are readily accessible to and usable by individuals with disabilities
5 constitutes discrimination for purposes of 42 U.S.C. §12183(a). Therefore, Defendants
6 discriminated against Plaintiff's Member Theodore A. Pinnock in violation of 42 U.S.C. §
7 12182(a).

8 30. Thus, Plaintiff's Member Theodore A. Pinnock was subjected to discrimination in violation
9 of 42 U.S.C. § 12183(a), 42 U.S.C. §12182(a) and 42 U.S.C. §12188 because said Member
10 Theodore A. Pinnock was denied equal access to Defendants' existing facilities.

11
12 CLAIM III AGAINST ALL DEFENDANTS: **Failure To Remove Architectural Barriers**

13 31. Based on the facts plead at ¶¶ 6-22 above and elsewhere in this complaint, Plaintiff's
14 Member was denied full and equal access to Defendants' goods, services, facilities, privileges,
15 advantages, or accommodations within a public accommodation owned, leased, and/or operated by
16 Defendants. Defendants failed to remove barriers as required by 42 U.S.C. § 12182(a). Plaintiffs
17 are informed, believe, and thus allege that architectural barriers which are structural in nature exist
18 within the following physical elements of Defendants' facilities: Space Allowance and Reach
19 Ranges, Accessible Route, Protruding Objects, Ground and Floor Surfaces, Parking and Passenger
20 Loading Zones, Curb Ramps, Ramps, Stairs, Elevators, Platform Lifts (Wheelchair Lifts),
21 Windows, Doors, Entrances, Drinking Fountains and Water Coolers, Water Closets, Toilet Stalls,
22 Urinals, Lavatories and Mirrors, Sinks, Storage, Handrails, Grab Bars, and Controls and Operating
23 Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones. Title III requires places of
24 public accommodation to remove architectural barriers that are structural in nature to existing
25 facilities. [See, 42 United States Code 12182(b)(2)(A)(iv).] Failure to remove such barriers and
26 disparate treatment against a person who has a known association with a person with a disability
27 are forms of discrimination. [See 42 United States Code 12182(b)(2)(A)(iv).] Thus, Plaintiff's
28 Member was subjected to discrimination in violation of 42 United States Code 12182(b)(2)(A)(iv)

1 and 42 U.S.C. § 12188 because said Member was denied equal access to Defendants' existing
2 facilities.

3
4 **CLAIM IV AGAINST ALL DEFENDANTS: Failure To Modify Practices, Policies And**
5 **Procedures**

6 32. Based on the facts plead at ¶¶ 6-22 above and elsewhere in this complaint, Defendants
7 failed and refused to provide a reasonable alternative by modifying its practices, policies and
8 procedures in that they failed to have a scheme, plan, or design to assist Plaintiff's Member and/or
9 others similarly situated in entering and utilizing Defendants' services, as required by 42 U.S.C. §
10 12188(a). Thus, said Member was subjected to discrimination in violation of 42 United States
11 Code 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Member was denied equal access to
12 Defendants' existing facilities.

13 33. Based on the facts plead at ¶¶ 6-22 above, Claims I, II, and III of Plaintiffs' First Cause Of
14 Action above, and the facts elsewhere herein this complaint, Plaintiffs will suffer irreparable harm
15 unless Defendants are ordered to remove architectural, non-architectural, and communication
16 barriers at Defendants' public accommodation. Plaintiffs allege that Defendants' discriminatory
17 conduct is capable of repetition, and this discriminatory repetition adversely impacts Plaintiffs and
18 a substantial segment of the disability community. Plaintiffs allege there is a national public
19 interest in requiring accessibility in places of public accommodation. Plaintiffs have no adequate
20 remedy at law to redress the discriminatory conduct of Defendants. Plaintiff's Member desires to
21 return to Defendants' places of business in the immediate future. Accordingly, the Plaintiffs allege
22 that a structural or mandatory injunction is necessary to enjoin compliance with federal civil rights
23 laws enacted for the benefit of individuals with disabilities.

24 34. WHEREFORE, Plaintiffs pray for judgment and relief as hereinafter set forth.

25 **SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - CLAIMS UNDER**
26 **CALIFORNIA ACCESSIBILITY LAWS**

27 **CLAIM I: Denial Of Full And Equal Access**

28 35. Based on the facts plead at ¶¶ 6-22 above and elsewhere in this complaint, Plaintiff's

1 Member was denied full and equal access to Defendants' goods, services, facilities, privileges,
2 advantages, or accommodations within a public accommodation owned, leased, and/or operated by
3 Defendants as required by Civil Code Sections 54 and 54.1. Defendants' facility violated
4 California's Title 24 Accessible Building Code by failing to provide access to Defendants' facilities
5 due to violations pertaining to the Space Allowance and Reach Ranges, Accessible Route,
6 Protruding Objects, Ground and Floor Surfaces, Parking and Passenger Loading Zones, Curb
7 Ramps, Ramps, Stairs, Elevators, Platform Lifts (Wheelchair Lifts), Windows, Doors, Entrances,
8 Drinking Fountains and Water Coolers, Water Closets, Toilet Stalls, Urinals, Lavatories and
9 Mirrors, Sinks, Storage, Handrails, Grab Bars, and Controls and Operating Mechanisms, Alarms,
10 Detectable Warnings, Signage, and Telephones.

11 36. These violations denied Plaintiff's Member full and equal access to Defendants' facility.
12 Thus, said Member was subjected to discrimination pursuant to Civil Code §§ 51, 52, and 54.1
13 because Plaintiff's Member was denied full, equal and safe access to Defendants' facility, causing
14 severe emotional distress.

15 **CLAIM II: Failure To Modify Practices, Policies And Procedures**

16 37. Based on the facts plead at ¶¶ 6-22 above and elsewhere herein this complaint, Defendants
17 failed and refused to provide a reasonable alternative by modifying its practices, policies, and
18 procedures in that they failed to have a scheme, plan, or design to assist Plaintiff's Member and/or
19 others similarly situated in entering and utilizing Defendants' services as required by Civil
20 Code § 54.1. Thus, said Member was subjected to discrimination in violation of Civil Code § 54.1.

21 **CLAIM III: Violation Of The Unruh Act**

22 38. Based on the facts plead at ¶¶ 6-22 above and elsewhere herein this complaint and because
23 Defendants violated the Civil Code § 51 by failing to comply with 42 United States Code §
24 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and continue to discriminate
25 against Plaintiff's Member and persons similarly situated in violation of Civil Code §§ 51, 52, and
26 54.1.

27 39. Based on the facts plead at ¶¶ 6-22 above, Claims I, II, and III of Plaintiffs' Second Cause
28

1 Of Action above, and the facts elsewhere herein this complaint, Plaintiffs will suffer irreparable
2 harm unless Defendants are ordered to remove architectural, non-architectural, and communication
3 barriers at Defendants' public accommodation. Plaintiffs allege that Defendants' discriminatory
4 conduct is capable of repetition, and this discriminatory repetition adversely impacts Plaintiffs and
5 a substantial segment of the disability community. Plaintiffs allege there is a state and national
6 public interest in requiring accessibility in places of public accommodation. Plaintiffs have no
7 adequate remedy at law to redress the discriminatory conduct of Defendants. Plaintiff's Member
8 desires to return to Defendants' places of business in the immediate future. Accordingly, the
9 Plaintiffs allege that a structural or mandatory injunction is necessary to enjoin compliance with
10 state civil rights laws enacted for the benefit of individuals with disabilities.

11 40. Wherefore, Plaintiffs pray for damages and relief as hereinafter stated.

12
13 **Treble Damages Pursuant To Claims I, II, III Under The California Accessibility Laws**

14 41. Defendants, each of them respectively, at times prior to and including, the month of August,
15 2004, and continuing to the present time, knew that persons with physical disabilities were denied
16 their rights of equal access to all portions of this public facility. Despite such knowledge,
17 Defendants, and each of them, failed and refused to take steps to comply with the applicable access
18 statutes; and despite knowledge of the resulting problems and denial of civil rights thereby suffered
19 by Plaintiff's Member THEODORE A. PINNOCK and other similarly situated persons with
20 disabilities. Defendants, and each of them, have failed and refused to take action to grant full and
21 equal access to persons with physical disabilities in the respects complained of hereinabove.
22 Defendants, and each of them, have carried out a course of conduct of refusing to respond to, or
23 correct complaints about, denial of disabled access and have refused to comply with their legal
24 obligations to make Defendants' OLYMPIC RESORT HOTEL a.k.a. OLYMPIC RESORT
25 HOTEL & SPA facility accessible pursuant to the Americans With Disability Act Access
26 Guidelines (ADAAG) and Title 24 of the California Code of Regulations (also known as the
27 California Building Code). Such actions and continuing course of conduct by Defendants, and each
28 of them, evidence despicable conduct in conscious disregard of the rights and/or safety of Plaintiff's

1 Member and of other similarly situated persons, justifying an award of treble damages pursuant to
2 sections 52(a) and 54.3(a) of the California Civil Code.

3 42. Defendants', and each of their, actions have also been oppressive to persons with physical
4 disabilities and of other members of the public, and have evidenced actual or implied malicious
5 intent toward those members of the public, such as Plaintiff's Member and other persons with
6 physical disabilities who have been denied the proper access to which they are entitled by law.
7 Further, Defendants', and each of their, refusals on a day-to-day basis to correct these problems
8 evidence despicable conduct in conscious disregard for the rights of Plaintiff's Member
9 THEODORE A. PINNOCK and other members of the public with physical disabilities.

10 43. Plaintiffs pray for an award of treble damages against Defendants, and each of them,
11 pursuant to California Civil Code sections 52(a) and 54.3(a), in an amount sufficient to make a
12 more profound example of Defendants and encourage owners, lessors, and operators of other public
13 facilities from willful disregard of the rights of persons with disabilities. Plaintiffs do not know the
14 financial worth of Defendants, or the amount of damages sufficient to accomplish the public
15 purposes of section 52(a) of the California Civil Code and section 54.3 of the California Civil
16 Code.

17 44. Wherefore, Plaintiffs pray for damages and relief as hereinafter stated.

18 PLAINTIFF THEODORE A. PINNOCK'S THIRD CAUSE OF ACTION AGAINST ALL
19 DEFENDANTS- Negligence as to Plaintiff THEODORE A. PINNOCK only

20 45. Based on the facts plead at ¶¶ 6-22 above and elsewhere in this complaint, Defendants owed
21 Plaintiff Theodore A. Pinnock a statutory duty to make their facility accessible and owed Plaintiff
22 Theodore A. Pinnock a duty to keep Plaintiff Theodore A. Pinnock reasonably safe from known
23 dangers and risks of harm. This said duty arises by virtue of legal duties proscribed by various
24 federal and state statutes including, but not limited to, ADA, ADAAG, Civil Code 51, 52, 54, 54.1,
25 54.3, and Title 24 of the California Administrative Code and applicable 1982 Uniform Building
26 Code standards as amended.

27 46. Title III of the ADA mandates removal of architectural barriers and prohibits disability
28

1 discrimination. As well, Defendants' facility, and other goods, services, and/or facilities provided
2 to the public by Defendants are not accessible to and usable by persons with disabilities as required
3 by Health and Safety Code § 19955 which requires private entities to make their facility accessible
4 before and after remodeling, and to remove architectural barriers.

5 47. Therefore, Defendants engaged in discriminatory conduct in that they failed to comply with
6 known duties under the ADA, ADAAG, Civil Code 51, 52, 54, 54.1, 54.3, ADAAG, and Title 24,
7 and knew or should have known that their acts of nonfeasance would cause Plaintiff THEODORE
8 A. PINNOCK emotional, bodily and personal injury. Plaintiff THEODORE A. PINNOCK alleges
9 that there was bodily injury in this matter because when Plaintiff THEODORE A. PINNOCK
10 attempted to enter, use, and exit Defendants' establishment, Plaintiff THEODORE A. PINNOCK
11 experienced pain in his legs, back, arms, shoulders, and wrists. Plaintiffs further allege that such
12 conduct was done in reckless disregard of the probability of said conduct causing Plaintiff
13 THEODORE A. PINNOCK to suffer bodily or personal injury, anger, embarrassment, depression,
14 anxiety, mortification, humiliation, distress, and fear of physical injury. Plaintiff THEODORE A.
15 PINNOCK, An Individual, alleges that such conduct caused THEODORE A. PINNOCK, An
16 Individual, to suffer the injuries of mental and emotional distress, including, but not limited to,
17 anger, embarrassment, depression, anxiety, mortification, humiliation, distress, and fear of physical
18 injury. Plaintiff THEODORE A. PINNOCK, An Individual, additionally alleges that such conduct
19 caused THEODORE A. PINNOCK, An Individual, to suffer damages as a result of these injuries.

20 48. Wherefore, Plaintiffs pray for damages and relief as hereinafter stated.
21

22 DEMAND FOR JUDGMENT FOR RELIEF:

23 A. For general damages pursuant to Cal. Civil Code §§ 52, 54.3, 3281, and 3333;

24 B. For \$4,000 in damages pursuant to Cal. Civil Code § 52 for each and every offense of
25 Civil Code § 51, Title 24 of the California Building Code, ADA, and ADA Accessibility
26 Guidelines;
27
28

1 C. In the alternative to the damages pursuant to Cal. Civil Code § 52 in Paragraph B above,
2 for \$1,000 in damages pursuant to Cal. Civil Code § 54.3 for each and every offense of Civil Code
3 § 54.1, Title 24 of the California Building Code, ADA, and ADA Accessibility Guidelines;

4
5 D. For injunctive relief pursuant to 42 U.S.C. § 12188(a) and Cal. Civil Code § 55. Plaintiffs
6 request this Court enjoin Defendants to remove all architectural barriers in, at, or on their facilities
7 related to the following: Space Allowance and Reach Ranges, Accessible Route, Protruding
8 Objects, Ground and Floor Surfaces, Parking and Passenger Loading Zones, Curb Ramps, Ramps,
9 Stairs, Elevators, Platform Lifts (Wheelchair Lifts), Windows, Doors, Entrances, Drinking
10 Fountains and Water Coolers, Water Closets, Toilet Stalls, Urinals, Lavatories and Mirrors, Sinks,
11 Storage, Handrails, Grab Bars, and Controls and Operating Mechanisms, Alarms, Detectable
12 Warnings, Signage, and Telephones.

13
14 E. For attorneys' fees pursuant to 42 U.S.C. § 1988, 42 U.S.C. § 12205, and Cal. Civil Code
15 § 55;

16
17 F. For treble damages pursuant to Cal. Civil Code §§ 52(a), and 54.3(a);

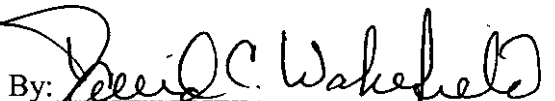
18 G. A Jury Trial and;

19 H. For such other further relief as the court deems proper.

20 Respectfully submitted:

21
22
23 Dated: September 27, 2004

PINNOCK & WAKEFIELD, A.P.C.

By: 

DAVID C. WAKEFIELD, ESQ.

Attorneys for Plaintiffs

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS

MANTIC ASHANTI'S CAUSE, SUING ON BEHALF OF THEODORE A. PINNOCK AND ITS MEMBERS AND THEODORE A. PINNOCK, An Individual

FILED 04 OCT 4 AM 8:48

DEFENDANTS OLYMPIC RESORT HOTEL a.k.a. OLYMPIC RESORT HOTEL & SPA; GOLF COURSE HOTELS, INC. d.b.a. OLYMPIC RESORT HOTEL a.k.a. OLYMPIC RESORT HOTEL & SPA; THEODORE L. VALLAS d.b.a. OLYMPIC RESORT HOTEL a.k.a. OLYMPIC RESORT HOTEL & SPA; OLYMPIC RESORT JOINT VENTURE; THEODORE L. VALLAS, A General Partner; GOLF COURSE HOTELS, INC., A General Partner; And DOES 1 THROUGH 10, Inclusive

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF

CLERK, U.S. DISTRICT COURT, San Diego

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT

San Diego

(IN U.S. PLAINTIFF CASES ONLY) AND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

BY:

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

David C. Wakefield, Esq. SBN: 185736
Michelle L. Wakefield, Esq. SBN: 200424
Pinnock & Wakefield, A.P.C.; 3033 Fifth Avenue, Suite 410
San Diego, CA 92103
Telephone: (619) 858-3671; Facsimile: (619) 858-3646

ATTORNEYS (IF KNOWN)

'04 CV 1987

JAH (RBB)

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) (For Diversity Cases Only)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PT DEF 1 Incorporated or Principal Place of Business in This State
PT DEF 2 Incorporated and Principal Place of Business in Another State
PT DEF 3 Foreign Nation

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

42 U.S.C. Sections 12101-12102, 12181-12183, and 12201, Et. Seq.

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

Table with 5 columns: CONTRACT, REAL PROPERTY, PERSONAL INJURY, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, BANKRUPTCY, FEDERAL TAX SUITS, OTHER STATUTES. Includes checkboxes for various legal categories like 110 Insurance, 310 Airplane, 610 Agriculture, etc.

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- 1 Original Proceeding
2 Removal from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23

DEMAND \$

To Be Determined At Trial

Check YES only if demanded in complaint:

JURY DEMAND: YES NO

VIII. RELATED CASE(S) IF ANY (See Instructions):

JUDGE

Docket Number

DATE Sept. 22, 2004

SIGNATURE OF ATTORNEY OF RECORD

#107465 \$100.00

David C. Wakefield